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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XW010

Scoping Meeting for Protective Regulations for Killer Whales in the Inland Waters of Washington State

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting, request for comments.

SUMMARY: This notice informs the public of an upcoming scoping process, including a scoping meeting, to solicit public comments on whether, based on best available information, existing National Marine Fisheries Service (NMFS) regulations and other measures adequately protect killer whales from the impacts of vessels and noise in the inland waters of Washington State and, if not, what actions NMFS should take. To inform comments, information on existing regulations and other protective measures are available at:

https://archive.fisheries.noaa.gov/wcr/protected_species/marine_mammals/killer_whale/vessel_regulations.html.

DATES: Written or electronic scoping comments must be received by *[insert date 60 days after date of publication in the Federal Register]*.

ADDRESSES: You may submit comments on this document by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments by sending an email to *OrcaRecovery.WCR@noaa.gov* using the subject line “Comments on Protective Regulations for Killer Whales Scoping.”

- *Mail:* Submit written comments to Seattle Branch Chief, Protected Resources Division, West Coast Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Building 1, Seattle, WA 98115, Attn: SRKW Vessel Regulation Revision.

Comments can also be provided in person during the scoping meeting, listed below.

FOR FURTHER INFORMATION CONTACT: Grace Ferrara, West Coast Region, National Marine Fisheries Service. Telephone: 206-526-6172. Email: *grace.ferrara@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Dates, Times, and Locations

The date, time, and location of the scoping meeting is scheduled as follows:

Tuesday, November 12th, 2019 – Friday Harbor, WA, 5 p.m. to 8 p.m.

Brickworks Event Center, 150 Nichols St. Friday Harbor, WA 98250.

Background

NMFS listed the Southern Resident killer whale distinct population segment as endangered under the Endangered Species Act (ESA) in 2005 (70 FR 69903; November 18, 2005). During the listing of Southern Residents and the development of the 2008 Recovery Plan, vessel impacts were identified as one of the three main threats to recovery (NMFS, 2008). While in the inland waters of Washington State, this population is the target of an active transboundary commercial whale watch industry. In 2009, NMFS concluded that the voluntary guidelines in place to reduce vessel impacts on the whales were not adequately addressing this threat and initiated a formal rulemaking process to establish mandatory regulations. The final rule

published in 2011 consisted of two measures: (1) a prohibition on approaching any killer whale within 200 yards, and (2) a prohibition on parking in the path of any killer whale within 400 yards. These regulations apply to all killer whales in the inland waters of Washington State.

When NMFS implemented these protective vessel regulations in 2011, we committed to evaluating their effectiveness post-implementation. NMFS completed this evaluation in 2017 and the Technical Memo (Ferrara et al., 2017) can be found here:

https://archive.fisheries.noaa.gov/wcr/publications/protected_species/marine_mammals/killer_whales/noaa_techmemo_nmfsopr-58_dec2017.pdf. Although received noise levels were variable and not significantly lower after the regulations were put in place (Holt et al., 2017), the conclusions of this evaluation indicate that there have been some benefits to having protective regulations in place (Ferrara et al., 2017). An economic analysis showed that, based on a review of multiple indicators for the ecotourism industry, the regulations did not have a negative impact on the commercial whale watch industry, but rather that the industry continued to grow after the regulations were put in place (Industrial Economics, 2015). These results indicate that additional protective measures could provide a greater biological benefit to the whales without necessarily harming the commercial whale watch industry.

Since the implementation of the 2011 vessel regulations, NMFS has continued to participate in efforts to develop and receive public input for protective measures to reduce vessel impacts on killer whales in Washington's inland waters. NMFS has partnered with the Washington Department of Fish and Wildlife (WDFW) to enforce the regulations, providing funding through three ESA grants from 2013 to the present to expand WDFW's involvement in protecting Southern Resident killer whales. A killer whale protection workshop held by NMFS in 2013 brought scientists, enforcement officers, non-governmental organizations, industry, and

members of the public together to review existing protections for the whales as well as the role of monitoring, enforcement of boater education efforts, identify data gaps, and provide an opportunity for stakeholder input on next steps to address vessel effects on killer whales. In late 2016, NMFS received a petition to establish a Whale Protection Zone (WPZ) on the west side of San Juan Island. In response to that petition, NMFS sought public comment and, during a 90-day comment period in 2017, members of the public, local and state government, federal agencies, tribal organizations, NGOs, and industry submitted comments on the proposed WPZ design as well as protected areas for Southern Residents in general.

NMFS also engaged in broader efforts to study and develop measures to reduce vessel impacts. In March 2018, the Washington State Governor established the Southern Resident Orca Task Force to identify immediate actions to benefit Southern Residents as well as develop a long-term action plan for recovery. NMFS serves on this Task Force as well as in its Vessel Working Group. In its first year, the Task Force made 12 recommendations to fulfill the goal of reducing disturbance from vessels to Southern Residents. The full list of recommendations can be found here:

https://www.governor.wa.gov/sites/default/files/OrcaTaskForce_reportandrecommendations_11.16.18.pdf. Several of these recommendations were taken up by the Washington State legislature in 2019, including the recommendations to increase the approach distance and establish a go-slow zone around Southern Residents.

Since 2017 NMFS has also served on the Advisory Working Group and the Acoustic Technical Committee for a voluntary slow-down trial, called ECHO, for piloted vessels transiting through Haro Strait. This trial has provided valuable insight into the impact of reducing the speed of large ships on the ambient noise level in an important foraging area for

Southern Resident killer whales, as well as the impact of displacing vessel traffic away from an area frequented by Southern Residents. When compared to the pre-trial period, the acoustic intensity of ambient noise in the area of the west coast of San Juan Island was reduced by as much as 44 percent (corresponding to a 2.5 DB reduction in media sound pressure level) when vessel slowed down through the Strait (Joy et al., 2019). Results of the lateral displacement trials are pending.

Public Comments

This scoping process aims to gather input regarding the need to revise the existing regulations, the scope of actions to be proposed for any rulemaking, the development of alternatives to that would be analyzed in the NEPA analysis, and the potential impact of management actions. NMFS is soliciting information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties. In particular, we request information and comments concerning: (1) the advisability of and need for changes to the existing regulations; (2) alternative management options for regulating vessel interactions with killer whales; (3) scientific and commercial information regarding the effect of vessels on killer whales and their habitat; (4) potential economic impacts of management options; and (5) any additional relevant information that NMFS should consider should it undertake rulemaking. In any future rulemaking, NMFS would consider existing voluntary and regulatory efforts to protect the whales, effectiveness and consistency of protective measures, transboundary coordination, the best available scientific information and public input in developing any amendments to the current federal vessel regulations.

Comments and suggestions received as part of this scoping process will be considered when developing the alternatives for analysis. Comments that were submitted to NMFS

regarding the 2010 Environmental Assessment or previous proposed rule will be considered and do not need to be resubmitted.

Authority: 40 C.F.R. 1501.2, 1501.7; 16 U.S.C. 1540(f) and MMPA section 112(a) (16 U.S.C. 1382(a)).

Dated: October 18, 2019.

Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.

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